



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/920,679	08/01/2001	Robert Kavet	009842-0243-999	5753

24341 7590 11/06/2003

Pennie & Edmonds, LLP
3300 Hillview Avenue
Palo Alto, CA 94304

EXAMINER

FOREMAN, JONATHAN M

ART UNIT	PAPER NUMBER
----------	--------------

3736

DATE MAILED: 11/06/2003

8

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/920,679

Applicant(s)

KAVET ET AL.

Examiner

Jonathan ML Foreman

Art Unit

3736

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 July 2003.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 3-9 and 11-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 3-9 and 11-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ 6) ☐ Other: _____

DETAILED ACTION

The finality of the office action mailed 4/16/03 has been withdrawn in accordance with the new rejection of previously objected to as allowable subject matter. For the purposes of this action, the After Final Amendment filed 7/7/03 has been entered into the case.

Specification

1. The disclosure is objected to because of the following informalities: Page 1, line 7 states, “[f]or the purposes of this patent...”. The examiner suggests replacing “patent” with “disclosure”.

Appropriate correction is required.

Claim Objections

2. Claims 3, 11 and 14 are objected to because of the following informalities: The phrase “to process said voltage data” is repeated. Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 17 – 32 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regards to claim 17, it is unclear how the memory can calculate a current flow (lines 6 – 8).

Claim Rejections - 35 USC § 102

5. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3736

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

6. Claims 3 – 8, 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S.

Patent No. 5,897,505 to Feinberg et al.

In reference to claims 3 – 8, 11 – 14, 16 and 34, Feinberg et al. discloses data acquisition circuitry consisting of a first and second contact (16, 18) to generate voltage data (Col. 3, lines 48 – 60) and a first connection and second connection connected to the first and second contact; and a portable data processing unit to process the voltage data and body impedance data to produce current flow data (Col. 3, line 48 – Col. 4, line 30), where the portable data processing unit has acquired data conditioning circuitry having an amplifier to condition a data signal from the first contact to the second contact (Col. 3, lines 53 – 55). The portable processing unit has a keypad (22) and includes data input circuitry. The apparatus has an autonomous power source (Col. 2, lines 66 – 67). Feinberg et al. discloses data output circuitry connected to a visual display (24). The processing unit has a memory for storing a set of executable programs (Col. 4, line 61 – Col. 5, line 24) and impedance data comprised of known body impedances (Col. 4, lines 5 – 8). The memory stores a parameter calculator that compares conditioned data with known body impedances to generate data on the current flow through the body (Col. 4, lines 4 – 60). The memory stores an output module that controls the menu of an LCD display (Col. 3, lines 14 – 37).

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary

Art Unit: 3736

skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 9, 15 and 33 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,897,505 to Feinberg et al. as applied to the claims, and further in view of U.S. Patent No. 6,393,317 to Fukuda et al.

In reference to claims 9, 15 and 33, Feinberg et al. discloses data output interface circuitry, but fails to disclose connecting a compact removable flash memory card to the circuitry for storage. However, Fukuda et al. teaches an apparatus for measuring current flow through a living body (Figure 1) in which a compact removable flash memory card (51) is connected to the data output interface circuitry (Col. 4, lines 24 – 28). One skilled in the art at the time the invention was made would have been motivated to modify the data output interface circuitry as discloses by Feinberg et al. to include the removable flash memory card as taught by Fukuda et al. in order to store the results of the test so that it could be readily accessed at a later time.

Response to Arguments

8. Applicant's arguments filed 7/7/03 have been fully considered but they are not persuasive. Applicant has asserted that claims 3, 11 and 14 and corresponding dependant claims are allowable because of the inclusion of objected to as allowable subject matter. However, the examiner has applied a new rejection to the claims and has accordingly withdrawn the finality of the action mailed 4/16/03.

Allowable Subject Matter

9. Claims 17 - 32 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action. The prior art neither teaches or fairly suggests an apparatus for measuring the current flow though a living body having a

Art Unit: 3736

processing unit having a memory configured to store generic body impedance data, where the processing unit calculates a current flow through the body using voltage data and the generic body impedance data stored in the memory.

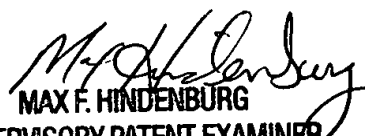
Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jonathan ML Foreman whose telephone number is (703)-305-5390. The examiner can normally be reached on Monday - Friday 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Max F Hindenburg can be reached on (703)308-3130. The fax phone numbers for the organization where this application or proceeding is assigned are (703)-872-9306 for regular communications and (703)-872-9306 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703)-308-0858.

JMLF
November 4, 2003


MAX F. HINDENBURG
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700